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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)	Case No. EDCR 08- 174 VAP
Plaintiff,)	
v.)	ORDER DENYING DEFENDANT'S
ANDREW LEE FUENTEZ,)	MOTION TO SUPPRESS EVIDENCE
Defendant.)	[Motion filed on December 8,
	2007.]

The Court has received and considered all papers filed in support of, and opposition to, Defendant Andrew Lee Fuentez's ("Defendant") Motion to Suppress Evidence ("Mot."), as well as the evidence and argument presented by all counsel at the evidentiary hearing conducted on January 29, 2009. For the reasons set forth below, the Court DENIES the Motion.

I. BACKGROUND

The four count indictment filed by the Government in this case charges Defendant with possession with the

1 intent to distribute approximately 141 grams of cocaine
2 (violation of 21 U.S.C. § 841(a)(1)); possession with the
3 intent to distribute approximately 20 grams of marijuana
4 (violation of 21 U.S.C. § 841(a)(1)); possession of a
5 firearm during and in furtherance of a drug trafficking
6 crime (violation of 18 U.S.C. § 924(d)); and seeks
7 forfeiture of two firearms pursuant to 18 U.S.C. §
8 924(d).

9
10 Defendant moves to suppress all evidence seized after
11 the warrantless search of his vehicle by Riverside Police
12 Officers Timothy Jensen and David Hammer. Defendant
13 consented to the search of his car, but contends the
14 evidence must be suppressed because "the officers who
15 stopped Mr. Fuentes's car had no constitutionally valid
16 reason to do so." (Mot. at 1.)

17 18 II. DISCUSSION

19 A. Validity of the Terry¹ Stop

20 At 8:45 p.m. on July 26, 2008, Officers Hammer and
21 Jensen were on patrol on La Sierra Avenue in Riverside,
22 when they saw and heard Defendant's car, a Chevrolet
23 Monte Carlo. The Officers heard very loud music coming
24 from the Monte Carlo, a violation of California Vehicle
25 Code section 27007. Officer Hammer was driving the
26 marked Riverside Police Department patrol car, and

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28 ¹Terry v. Ohio, 392 U.S. 1, 27 (1968).

1 recognized the Monte Carlo as Defendant's car. He asked
2 Officer Jensen to run a check through CLETS on the patrol
3 car's computer to determine whether the car's
4 registration was current.²

5
6 Officer Jensen typed the information about the
7 vehicle's license plate and make into the computer, and a
8 few seconds later he received a response that the Monte
9 Carlo's registration had expired only a few days earlier.
10 Both officers testified that Officer Hammer did not
11 activate the patrol car's red lights, thus signifying to
12 Defendant to pull his car over, until they had the
13 information from CLETS that Defendant's vehicle
14 registration had expired.

15
16 Once Defendant pulled his car over in response to the
17 lights from the patrol car, Officer Hammer approached and
18 told him the officers were stopping him because of the
19 loud music; he did not tell Defendant he was being
20 stopped because his vehicle's registration had expired.

21
22 At the hearing on this Motion, the defense argued the
23 motion must be granted because the evidence, i.e., the
24 declarations and the testimony presented at the hearing,
25 and the reasonable inferences to be drawn from it, do not
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27
28 ²The car's registration appeared current, as it bore
a July 2008 sticker. See Ex. B to Def.'s Mot.

1 support the conclusion that the officers had reasonable
2 suspicion (indeed, probable cause) to stop Defendant for
3 driving his car without valid registration. As it is
4 undisputed that neither officer told Defendant at the
5 beginning of their contact with him that they had pulled
6 him over for anything other than violation of Vehicle
7 Code section 27007, Defendant contends, the existence of
8 reasonable suspicion to do so is irrelevant, and lacking
9 reasonable suspicion that the vehicle was not currently
10 registered, the stop and the subsequent search were
11 unconstitutional.

12
13 Furthermore, Defendant urges the Court to reject the
14 officers' testimony that they obtained the information
15 from CLETS before they initiated the traffic stop. He
16 points to the discrepancy between the testimony of
17 Officer Jensen about the amount of time that elapsed
18 while the patrol car followed the car for a few blocks,
19 and the testimony of defense investigator Gentillalli on
20 this point. He also relies on the testimony that Officer
21 Hammer recognized the Monte Carlo immediately upon
22 sighting it, and his direction to his partner to initiate
23 the CLETS inquiry about the car's registration. Finally,
24 he also notes the location where the officers directed
25 Defendant to stop his car, in relation to the video
26 camera equipment in the nearby market. In sum, according
27 to the defense, all of the testimony and inferences
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1 therefrom support the conclusion that the officers
2 activated their red-lights and thus initiated the traffic
3 stop *before* the response from the CLETS system.

4
5 The discrepancies cited by the defense are minor and
6 do not convince the Court that the officers received the
7 information from CLETS that the car's registration had
8 expired after they instigated the traffic stop. For
9 example, neither the minor discrepancies regarding the
10 timing of the sighting of the Monte Carlo, nor Officer
11 Hammer's statement to Defendant regarding the basis for
12 the traffic stop, cast doubt on the testimony that the
13 officers had confirmation of the vehicle's registration
14 status by the time they pulled Defendant over.

15
16 The declarations and testimony from both officers
17 establish there was, at a minimum, reasonable suspicion
18 to support the traffic stop that evening. Both officers
19 testified they heard very loud music coming from
20 Defendant's car, a violation of Vehicle Code section
21 27007; this alone would have supported the stop.
22 Although Defendant argues this basis is not sufficient
23 because Officer Hammer only told him he was stopped for
24 the section 27007 violation, and not the registration
25 violation later described in the police report, he cites
26 no authority for the proposition that a Fourth Amendment
27 violation occurs when an officer who has reasonable

1 suspicion that one crime (or more than one crime) has
2 been committed only reports the more serious violation.

3
4 Even if Defendant were correct that the officers did
5 not confirm the expiration of the Monte Carlo's
6 registration until after the instigation of the traffic
7 stop on July 26, no Fourth Amendment violation would have
8 occurred here. In United States v. Mendez, 476 F.3d 1077
9 (9th Cir. 2007), Phoenix, Arizona police officers pulled
10 the defendant's car over because "it did not appear to
11 have a license plate or temporary registration tag;" once
12 the defendant was detained, one officer ran a records
13 check on the patrol car's computer while the other
14 officer questioned the defendant about matters unrelated
15 to the vehicle registration, including his gang
16 affiliation, and eventually, whether he had any weapons
17 in his car. When the defendant admitted he did, the
18 officers recovered a gun and Mendez was indicted on
19 charges of being a felon in possession of a firearm. The
20 trial court denied his motion to suppress the evidence
21 recovered from his car, and the Ninth Circuit affirmed
22 the ruling.

23
24 In other words, here the officers had reasonable
25 suspicion to stop Defendant because of the loud music
26 they heard coming from his car, in violation of the
27 California Vehicle Code; while detaining him for
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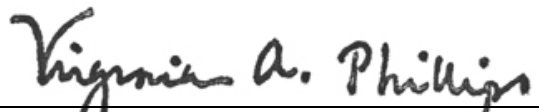
1 questioning about that, even if they still were
2 conducting the investigation on the car's registration,
3 given the brief amount of time involved it did not
4 unreasonably prolong the stop, and no Fourth Amendment
5 violation occurred. Mendez, 476 F.3d at 1079.

6
7 Furthermore, to the extent Defendant relies on the
8 suggestion that Officer Hammer decided to detain
9 Defendant as soon as he saw him that evening, under Whren
10 v. United States, 517 U.S. 806, 813 (1996), "Subjective
11 intentions play no role in ordinary, probable-cause
12 Fourth Amendment analysis."

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14 For the foregoing reasons, the Court DENIES the
15 Motion.

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17 **IT IS SO ORDERED.**

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20 Dated: February 11, 2009



VIRGINIA A. PHILLIPS
United States District Judge